

12/12/2016

**Cole, Lorrie***Ed Smith*CLERK OF THE SUPREME COURT  
STATE OF MONTANA**FILED**

Case Number: AF 09-0688

**From:** Williams, Judy <jwilliams@msubillings.edu>  
**Sent:** Monday, December 12, 2016 2:25 PM  
**To:** Cole, Lorrie  
**Subject:** Proposed Revision to RPC 1.18

DEC 12 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Dear Justices:

Although I submitted a written comment on this subject I had planned to travel to Helena to participate in the Public Meeting on December 13, 2016. Unfortunately weather and other commitments prevent me from doing so. I hope you can consider this further comment, especially because I am, in part, responding to the comment of Duncan Scott, which was printed in *The Montana Lawyer* December-January issue.

First, when IOLTA was enacted, we discovered that an alarming number of Montana lawyers had no client funds (trust) account at all. I spent a lot of time explaining to lawyers that they were not allowed to simply run retainers from clients through their regular business accounts. With a lot of help from Jim Aiken of Great Falls that issue was addressed and I believe we helped many lawyers avoid other problems in that regard.

Second, I read with concern the comment from Duncan Scott, especially his assertions about "constitutionality," "tax and spend" and the "client's money." The constitutionality issue has been addressed by many courts and there is not a constitutionality problem. Also, IOLTA is obviously not a "tax" because there is no imposition of a fee of any kind on anyone. As for IOLTA funds being client money, that is also erroneous. If, in fact, the client funds being deposited in the trust account are of such an amount or expected to be of such a duration that interest could be earned for the client, then those funds are required to be placed in a separate account for the client's benefit. As I am sure you all know, the funds intended to be channeled to IOLTA are those that would not be of a sufficient amount or to be retained for a sufficient duration to earn interest for an individual client. Attorneys are not allowed to earn interest on their clients' funds, either. IOLTA captures monies that would otherwise be retained by the bank as profit. Banks were, during my tenure with the Bar, very cooperative and supportive of the IOLTA program and counted it among their public services.

Third, regarding using the disciplinary process regarding mandatory reporting, I reiterate my previously-expressed position that doing so would contradict the position the State Bar of Montana and Montana Bar Foundation took at the time mandatory IOLTA was enacted: unless there was a compelling reason to do so, such as a large firm refusing to participate in the program, there was no intent to use the disciplinary process to punish lawyers who did not report. Rather, we believed State Bar staff could contact non-compliant lawyers to remind and assist them with compliance.

Finally, if I am correctly informed that the majority of lawyers who are non-compliant are those who never use a trust account because they don't handle client funds, why not amend the reporting form so that they inform the Foundation of that fact and then are required to report if their status changes? A simple change of that type would seem to be economical and practical. I apologize for failing to think of it when I wrote the mandatory IOLTA petition and reporting rules. I would be happy to assist in that action if requested.

Thank you for your attention to this issue. If you believe I can be of any assistance or you have questions for me please feel free to contact me on my direct line below or on my cell phone: 406-670-2861.

Sincerely yours,

*Judy A. Williams*

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